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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,
10 Plaintiff,
11 v.
12 Ivy Asia Fontenot, et al.,
13 Defendants.
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No. CR-22-00175-001-PHX-SMB
ORDER

15 Pending before the Court is Defendant Fontenot’s (“Ms. Fontenot’s”) Motion to
16 Sever Co-Defendant’s Case. (Doc. 55.) The Government has responded, (Doc. 71), and
17 Ms. Fontenot replied, (Doc. 89). Co-defendant Brooks did not file a response but objected
18 to any severance in open court. In considering this issue, the Court has also read Ms.
19 Fontenot’s Motion In Limine Evidence of Duress, Coercion, and Compulsion, (Doc. 54),
20 because it provides additional, relevant information. For the reasons explained below, the
21 Court will grant Ms. Fontenot’s Motion to Sever.

22 **I. Legal Standard**

23 It is true that “[t]here is a preference in the federal system for joint trials of
24 defendants who are indicted together.” *Zafiro v. United States*, 506 U.S. 534, 113 S. Ct.
25 933 at 937 (1993). Indeed, the hurdle on a motion to sever is “intentionally high,
26 particularly in conspiracy cases, where severance is especially disfavored.” *United States*
27 *v. Celestin*, 612 F.3d 14, 19 (1st Cir. 2010) (quoting *United States v. Peña–Lora*, 225 F.3d
28 17, 33 (1st Cir. 2000) (internal quotation marks omitted)). But Federal Rule of Criminal

1 Procedure 14(a) provides that, “[i]f the joinder of offenses or defendants in an indictment,
2 an information, or a consolidation for trial appears to prejudice a defendant or the
3 government, the court may order separate trials of counts, sever the defendants’ trials, or
4 provide any other relief that justice requires.” Rule 14 specifically authorizes a severance
5 where it appears that a defendant might be prejudiced by a joint trial. *Bruton v. United*
6 *States*, 391 U.S. 123, 131 (1968).

7 **II. Discussion**

8 Ms. Fontenot is charged in four counts: (1) conspiracy to commit sex trafficking
9 using force fraud or coercion in violation of 18 U.S.C. §§ 1594(c) and 1591; (2) sex
10 trafficking by force, fraud, or coercion in violation of 18 U.S.C. §§ 1591(a) and 1591(b)(1);
11 (3) transportation with the intent to engage in prostitution in violation of 18 U.S.C. §
12 2421(a); and (4) coercion and enticement in violation of 18 U.S.C. § 2224(a).

13 Ms. Fontenot’s defense will be one of coercion and duress at the hand of Defendant
14 Brooks. Her position is that she was manipulated and coerced in to remaining in a pimping
15 relationship with Brooks. She will testify to the abuse she sustained at the hands of
16 Defendant Brooks. Moreover, she alleges that Mr. Brooks beat her if he didn’t like the
17 way she answered him, at times beating her to the point of hospitalization. She further
18 alleges that Defendant Brooks limited and monitored her cellphone usage and controlled all
19 of her finances. Co-Defendant Brooks also made it clear that he knows where Ms.
20 Fontenot’s family lives and has shown up at her mother’s residence unannounced. Ms.
21 Fontenot’s counsel describes how Defendant Brooks tried to manipulate her at a status
22 hearing in this Court on June 27 before the Judge took the bench. The Court also observed
23 Mr. Brooks attempting to assert his dominance over Ms. Fontenot in the courtroom, even
24 while she was represented by counsel.

25 Ms. Fontenot argues that her defense is irreconcilable with Co-Defendant Brooks’
26 defense. However, Defendant Brooks has not made his defense theory known, so the Court
27 can only speculate as to any potential prejudice. Even if the defenses are antagonistic, that
28 does not mandate severance of a trial. *Zafiro*, 506 U.S. at 538.

1 The Government argues that Ms. Fontenot will not be able to present a duress
 2 defense after they present evidence to challenge the defense. *See United States v. Vasquez-*
 3 *Landaver*, 527 F.3d 798, 802 (9th Cir. 2008) (“[A] defendant is not entitled to present a
 4 duress defense to the jury unless the defendant has made a prima facie showing of duress
 5 in a pre-trial offer of proof.”). The Government cites to evidence which shows that Ms.
 6 Fontenot had a reasonable opportunity to escape, which would negate a duress defense.¹

7 In her Reply, Ms. Fontenot argues that her Sixth Amendment right to present a
 8 credible defense will be compromised. Once More, Defense Counsel cites to a hearing on
 9 July 22, when Co-Defendant Brooks again engaged in intimidating behavior toward Mr.
 10 Fontenot. This case does not present the typical argument for prejudice. The argument, at
 11 its core, is that prejudice is present because Co-Defendant Brooks is intimidating Ms.
 12 Fontenot to such an extent that she may be unable or unwilling to present her defense.

13 Ms. Fontenot primarily relies on the ruling in *U.S. v. Breinig*, 70 F.3d 850 (6th Cir.
 14 1995). In *Breinig*, the Sixth Circuit found that the lower court erred by not severing the
 15 trials of an ex-husband and ex-wife on charges of tax evasion for the business they owned
 16 while they were married. *Id.* at 853–54. The wife alleged diminished capacity to negate
 17 her mens rea because of her husband’s abuse. *Id.* at 851. The Sixth Circuit said it was
 18 error to deny the husband’s severance motion because the evidence of his bad character
 19 would not have been admitted had he been tried alone. *Id.* at 853.

20 The Government notes that *Breinig* is distinguishable because it was the abuser
 21 requesting the severance and, in this case, the alleged abuser—Brooks—is adamantly
 22 opposed to a severance. Additionally, the Sixth Circuit recognized that its decision was
 23 very fact driven and exceptional. *Id.* The Court agrees that *Breinig* presented an entirely
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25 ¹ A defendant acts under duress, coercion, or compulsion only if at the time of the crime
 26 charged: (1) there was a present, immediate, or impending threat of death or serious bodily
 27 injury to the defendant, a family member of the defendant if the defendant did not commit
 28 or participate in the commission of the crime; (2) the defendant had a well-grounded fear
 that the threat of death or serious bodily injury would be carried out; and (3) the defendant
 had no reasonable opportunity to escape the threatened harm. *Ninth Circuit Model
 Criminal Jury Instructions*, § 5.7 Duress, Coercion or Compulsion (Legal Excuse) (2019).

1 different set of concerns, and that the *Breinig* Court held that severance was warranted to
2 protect the abuser from prejudice resulting from the admission of bad character evidence.

3 In this case, Ms. Fontenot is the abused and seeks protection from Brook's
4 intimidation and manipulation during trial. But the Court finds that—like the situation in
5 *Breinig*—this is a unique and exceptional circumstance, such that severance is required. It
6 was very clear from this Court's own observations that Brooks has control over Ms.
7 Fontenot. Ms. Fontenot's demeanor changes the minute she is in the courtroom at the same
8 time as Defendant Brooks. The Court has no doubt that she will be severely limited in her
9 ability to help her counsel during trial, decide whether to testify, or make any other
10 decisions on her own if she proceeds to trial with Brooks.

11 **III. Conclusion**

12 Therefore,

13 **IT IS ORDERED granting** Ms. Fontenot's Motion to Sever Co-Defendant's Case.
14 (Doc. 55).

15 Dated this 28th day of July, 2022.

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Honorable Susan M. Brnovich
United States District Judge